

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JACOB ADONI and HARBOR PARK REALTY, LLC,

Plaintiffs,

2:19-cv-06971-JMA-ARL

-against-

WORLD BUSINESS LENDERS, LLC, AXOS BANK  
f/k/a B-of-I FEDERAL BANK and CIRCADIAN  
FUNDING, LLC,

Defendants.

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**DECLARATION OF NICHOLAS P.  
GIULIANO IN SUPPORT OF  
DEFENDANT CIRCADIAN  
FUNDING, LLC'S MOTION TO  
DISMISS THE AMENDED  
COMPLAINT**

STATE OF NEW YORK      )  
                              ) ss.:  
COUNTY OF NASSAU      )

NICHOLAS P. GIULIANO declares under penalty of perjury as follows:

1. I am a member of the bar of this Court and a member of the firm of Giuliano, McDonnell & Perrone, LLP, attorneys for the defendant, Circadian Funding, LLC (“Circadian”), and I make this affidavit in support of Circadian’s motion, pursuant to Federal Rule 4(m) of the Federal Rules of Civil Procedure, to dismiss the complaint for lack of service and for the plaintiffs’ failure to comply with the Court’s order to retain counsel.

2. The facts are straightforward. This action was originally filed in New York State Supreme Court, Suffolk County, on October 17, 2019. (Document 1.) On December 20, 2019, defendants, World Business Lender, LLC (“WBL”), and Axos Bank (“Axos”), removed the action to the Eastern District of New York. (Document 1.) Circadian had an open-ended extension of time to answer the state court complaint based on the representation of plaintiffs’ counsel that plaintiffs would make a motion to remand. The remand motion was never made.

3. The plaintiffs filed an amended complaint in the Eastern District on August 31, 2020. (Document 25.)

4. On April 20, 2021, the plaintiffs' attorney moved to withdraw as counsel (Document 36); the Court granted his motion on May 11, 2021. Prior to withdrawing, plaintiffs' counsel raised the issue of removal/remand in a memorandum of law filed on April 4, 2021. (Document 40.) WBL/Axos responded on May 4, 2021. (Document 41.) Still, no motion to remand has ever been made. Circadian received the amended complaint on or about May 24, 2021, nine months after it was filed (Document 25), although it was served on the Secretary of State's office on April 23, 2021. (Document 38, page 2; Document 39.)

5. When the Court granted plaintiffs' counsel motion to withdraw from the case, the Court gave the plaintiff 30 days to retain new counsel. On June 7, 2021, plaintiffs' retiring attorney made a motion asking the Court to give the plaintiff yet more time to retain new counsel. (Document 44.) It does not appear that the Court ruled on that application. Thereafter, the defendants requested leave to move to dismiss the amended complaint. (Documents 47 and 49.) On August 19, 2021, new attorneys appeared on behalf of the plaintiff (Document 51) and asked for an adjournment of 60 days to, among other things, conduct limited discovery, which should have been completed long ago. (Document 52.)

WHEREFORE, defendant, Circadian Funding, LLC, respectfully requests an order: (1) dismissing the amended complaint for (a) failure to complete service as required by Federal Rule 4 and (b) violating the Court's order to timely retain new counsel; and (2) granting such other, further, and different relief as may be just, proper, and equitable.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on September 3, 2021.



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Nicholas P. Giuliano